JUDGE LYNCH

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : INDICTMENT

- v. - : 09 Cr.

DANIEL LEDVEN, :
ALAN FISHMAN, and
GARY GELMAN, :

Defendants. :

- x

09 CRIM 666

COUNT ONE
(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

Relevant Persons and Entities

1. At all times relevant to this Indictment, A.R. Capital Group, Inc. ("A.R. Capital"), was a corporation organized under the laws of the State of New York. A.R. Capital operated out of offices in New York City, including an office located at 39 Broadway, New York, New York. A.R. Capital represented itself to be an unregistered financial advisory firm. A.R. Capital was also an introducing broker for a foreign exchange fund that was managed by another provider (the "FOREX Managed Accounts").

2. At all times relevant to this Indictment, A.R. Capital Global Fund, L.P. (the "ARC Global Fund") was a limited partnership organized under the laws of the State of New York, with its principle office located at 39 Broadway, New York, New York. A.R. Capital was the general partner of the ARC Global Fund. The ARC Global Fund purported to be a hedge fund.

3. From in or about 2002 up to and including in or about March 2006, ALAN FISHMAN, the defendant, was the owner and President of A.R. Capital. Throughout such period, FISHMAN held himself out as having primary responsibility for the investment decisions of the ARC Global Fund.

4. From in or about 2002 up to and including in or about February 2006, DANIEL LEDVEN, the defendant, was responsible for the day-to-day operations and management of A.R. Capital's and the ARC Global Fund's office at 39 Broadway, New York, New York. Throughout such period, LEDVEN was also responsible for the investment decisions of the ARC Global Fund. From in or about February 2006 up to and including at least May 2006, LEDVEN continued to be involved in the operations of A.R. Capital and the ARC Global Fund and received a portion of the proceeds from the ARC Global Fund.

5. From in or about 2002 up to and including in or about February 2006, GARY GELMAN, the defendant, was an account representative for A.R. Capital and was responsible for the day-to-day operations and management of A.R. Capital's and the ARC Global Fund's office at 39 Broadway, New York, New York. GELMAN made hiring decisions for A.R. Capital, and supervised and participated in efforts to raise funds for the ARC Global Fund from existing and prospective investors.

THE SCHEME TO DEFRAUD

6. As set forth below, from in or about 2002 up to and including in or about September 2006, DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, and others known and unknown, engaged in a scheme to defraud one and more investors by inducing at least 70 investors to invest approximately $20 million in the ARC Global Fund through the purchase of limited partnership interests based on false and fraudulent statements and representations of material facts, and through omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

7. A.R. Capital initially solicited investors into the FOREX Managed Accounts. LEDVEN, GELMAN, and others working under their supervision subsequently solicited those same investors to purchase interests in the ARC Global Fund.

8. In marketing the investment in the ARC Global Fund to investors, LEDVEN, FISHMAN, and GELMAN, along with others working under LEDVEN's and GELMAN's direct supervision and control, engaged in deceptive acts, practices, and courses of business; made false and fraudulent statements and representations of material facts; and omitted material facts necessary in order to make the statements made, in the light of

the circumstances under which they were made, not misleading, including, but not limited to, the following:

a. Beginning in or about August 2003, LEDVEN, FISHMAN and GELMAN caused an offering memorandum to be distributed to investors which contained false, fraudulent and misleading information, including, among other things, a false description of the ARC Global Fund as a hedge fund that invested primarily in the equity of international real estate companies; a false representation that investors in the ARC Global Fund would be mailed annual reports and financial statements prepared in accordance with generally accepted accounting principles by an independent public accounting firm; and false and misleading biographical profiles of FISHMAN and LEDVEN;

b. Beginning in or about August 2003, LEDVEN, FISHMAN and GELMAN caused a brochure to be distributed to investors which contained false, fraudulent and misleading information, including, among other things, a false description of the investment strategies of the ARC Global Fund;

c. From at least in or about 2003 up to and including February 2006, LEDVEN, FISHMAN, and GELMAN caused false, fraudulent and misleading monthly account statements to be sent to investors in the ARC Global Fund;

d. From at least in or about 2003 up to and including February 2006, LEDVEN and GELMAN supervised individuals soliciting investors in the ARC Global Fund who made oral misrepresentations about the ARC Global Fund's investments, including but not limited to statements that the ARC Global Fund invested in real estate, oil, gas and other commodities; and

e. From at least in or about 2003 up to and including February 2006, LEDVEN and GELMAN paid commissions, that were not disclosed to investors, to individuals who were soliciting investors in the ARC Global Fund.

9. In or about February 2006, FISHMAN purportedly sold A. R. Capital to a co-conspirator not named as a defendant herein ("CC-1") for the sales price of approximately $150,000. At the time of the sale, the ARC Global Fund had approximately $15 million of investor funds under management, and A.R. Capital purportedly earned a fee of 3% per annum for managing the ARC Global Fund and a yearly performance fee of 15% of the gross realized and unrealized profits of the ARC Global Fund.

10. From in or about February 2006 up to and including in or about September 2006, CC-1 and others working under CC-1's supervision and control solicited additional investors in the ARC Global Fund by engaging in deceptive acts, practices, and courses of business; making false and fraudulent statements and representations of material facts; and omitting material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading,

including, but not limited to: (a) distributing a document to investors that included a summary of A.R. Capital's purportedly audited annual performance containing falsely inflated annual returns for the years 2003, 2004 and 2005; (b) making false oral representations to investors about the nature of ARC Global Fund's investments; and (c) concealing the true identities of the individuals soliciting investments by using names other than their own.

Statutory Allegation

11. From in or about 2002 up to and including in or about September 2006, in the Southern District of New York and elsewhere, DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, and others known and unknown, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together and with others to commit offenses against the United States, to wit, to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

12. It was a part and an object of the conspiracy that DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in

violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon a person, in connection with the purchase and sale of securities, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

OVERT ACTS

13. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about August 2003, DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, were involved in the preparation and issuance of an offering memorandum for the ARC Global Fund, which contained material misrepresentations and omissions.

b. In or about March 2004, an investor met with GELMAN in New York, New York to discuss an investment in the ARC Global Fund.

c. In or about January 2005, a co-conspirator not named as a defendant herein ("CC-2") mailed a letter from New York, New York to an investor confirming the receipt of funds from the investor by the ARC Global Fund.

d. On or about March 8, 2005, CC-2 caused an investor to wire transfer approximately $1,819,000 from Ohio to a bank account maintained by A.R. Capital in New York, New York.

e. On or about February 28, 2006, FISHMAN signed an agreement purporting to sell A.R. Capital to CC-1.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Conspiracy to Commit Wire Fraud and Mail Fraud)

The Grand Jury further charges;

14. The allegations contained in paragraphs 1 through 10 of this Indictment are repeated and realleged as if fully set forth herein.

15. From in or about 2002 up to and including in or about September 2006, in the Southern District of New York and elsewhere, DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, and others known and unknown, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together and with others to commit offenses against the United States, to wit, to commit: (a) wire fraud, in violation of Title 18, United States Code, Section 1343; and (b) mail fraud, in violation of Title 18, United States Code, Section 1341.

16. It was a part and an object of the conspiracy that DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

17. It was further a part and an object of the conspiracy that DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carrier, and would and did take and receive therefrom, such matters and

things, and would and did knowingly cause to be delivered by mail or such carrier according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matters and things, in violation of Title 18, United States Code, Section 1341.

(Title 18, United States Code, Section 1349.)

COUNT THREE
(Securities Fraud)

The Grand Jury further charges:

18. The allegations contained in paragraphs 1 through 10 of this Indictment are repeated and realleged as if fully set forth herein.

19. From at least in or about 2002 up to and including in or about September 2006, in the Southern District of New York and elsewhere, DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, unlawfully, willfully and knowingly, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, would and did use and employ manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices, and courses of

business which operated and would operate as a fraud and deceit upon persons in connection with the purchase and sale of securities, to wit, in order to solicit investors into the ARC Global Fund, LEDVEN, FISHMAN, GELMAN and others working under LEDVEN's, FISHMAN's and GELMAN's supervision, made false representations about, among other things, the nature of the fund's investments, the fund's performance, the biographical profiles of the fund's principals, and whether the fund's financial statements would be audited.

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2)

COUNT FOUR
(Wire Fraud)

The Grand Jury further charges:

20. The allegations contained in paragraphs 1 through 10 of this Indictment are repeated and realleged as if fully set forth herein.

21. From at least in or about 2002 up to and including in or about September 2006, in the Southern District of New York and elsewhere, DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully and knowingly would and did transmit and cause to be transmitted by means of wire, radio, and

television communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, to wit, a wire transfer of approximately $1,819,000 on or about March 8, 2005, from Ohio to New York, for the purpose of executing such scheme and artifice, to wit, in order to solicit investors into the ARC Global Fund, LEDVEN, FISHMAN, GELMAN, and others working under LEDVEN's, FISHMAN's, and GELMAN's supervision, made false representations about, among other things, the nature of the fund's investments, the fund's performance, the biographical profiles of the fund's principals, and whether the fund's financial statements would be audited.

(Title 18, United States Code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

22. As the result of committing the securities fraud and wire fraud offenses, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Sections 1343 and 2, as alleged in Counts One through Four of this Indictment, DANIEL LEDVEN, ALAN FISHMAN, and GARY GELMAN, the defendants, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Four of this Indictment.

Substitute Asset Provision

23. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981 and 1343, Title 28, United States Code, Section 2461, Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5).

FOREPERSON

LEV L. DASSIN
Acting United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

DANIEL LEDVEN,
ALAN FISHMAN, and
GARY GELMAN,

Defendants.

INDICTMENT

09 Cr.

(Title 15, United States Code,
Sections 78j(b) and 78ff;
and Title 18, United States Code,
Sections 371, 1343, 1349 and 2.)

LEV L. DASSIN
Acting United States Attorney.

A TRUE BILL

Foreperson.

Indictment Filed. A/W Issued.
Case Assigned to USDJ Cote.

Fox, M.J.